

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACK EUGENE CARON,

Defendant-Appellant.

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UNPUBLISHED

June 17, 2003

No. 236682

Ottawa Circuit Court

LC No. 01-024695-FH

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of possession of marijuana, second offense, MCL 333.7403(2)(d); MCL 333.7413(2), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant moved to suppress the evidence. At a combined evidentiary hearing and bench trial the evidence showed that police officers went to defendant's residence to inform him that he was a suspect in a criminal investigation and that they wanted him to accompany them to the police station. Defendant testified that he allowed the officers to enter his home, but that he told them to remain by the door. One officer stated that he did not recall defendant directing them to stay by the door; the second officer stated that defendant placed no such restrictions on their movement. The second officer stated that he moved into the residence a short distance to make certain that defendant did not try to reach for weapons as he prepared to leave the residence. He stated that he looked at a coffee table and saw a marijuana pipe and a marijuana cigarette in plain view. Based on his experience, he recognized the items as contraband. Defendant maintained that he was standing between the officer and the table, and that the officer could not have seen the marijuana pipe or the marijuana cigarette from his vantage point. Defendant stated that the pipe was partially covered by papers. Based on the discovery of the pipe and cigarette, the police obtained a search warrant for defendant's residence, and found marijuana.

Defendant argued that the plain view exception to the search warrant requirement did not apply because the police discovered the contraband when they were in a place that they had no right to be. The trial court denied defendant's motion to suppress the evidence. The trial court rejected defendant's assertion that he told the officers to remain by the door, and found that the officers were lawfully in the residence. The evidence showed that the officers moved to allow themselves to watch defendant's movements. An officer saw a marijuana pipe and a marijuana

cigarette in plain view on defendant's coffee table. The trial court found that even if defendant's assertion that the pipe was partially covered by papers was true, that meant that a portion of the pipe was in plain view.

The trial court found defendant guilty of possession of marijuana, and sentenced him to 123 days in jail, with credit for 123 days served. Subsequently, the trial court denied defendant's motion for a new trial.

We review a trial court's findings of fact on a motion to suppress for clear error, and the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

A police officer may seize an item in plain view if the officer is lawfully in a position to view the item and the item's incriminating character is immediately apparent. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996). An item is obviously incriminatory if probable cause to seize the item exists without a search warrant. *Id.* at 102. Exigent circumstances are not required for seizure of the item. *Id.* at 101.

Defendant argues that the trial court erred by denying his motion to suppress the evidence. We disagree and affirm defendant's conviction. In deciding defendant's motion to suppress the evidence, the trial court was required to determine whether the officers were invited into defendant's residence and thus were lawfully in a position to be able to observe the contraband. The trial court specifically rejected defendant's assertion that he told the officers to stay by the door, and found that defendant placed no such restriction on the officers' movements. We give great deference to the trial court's assessment of the credibility of the witnesses. *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). The trial court's finding that the officers had permission to enter the apartment and that they were lawfully in a position to be able to see the contraband was not clearly erroneous. *Darwich, supra*. The trial court's finding that the marijuana pipe and cigarette were in plain view was not clearly erroneous in light of the officer's testimony that he saw the items when he looked at the coffee table. *Id.* The officer was entitled to rely on his experience to determine that the items were obviously incriminatory. *Champion, supra* at 102; *Darwich, supra* at 639. The trial court did not err in denying defendant's motion to suppress the evidence. *Id.* at 637.

Affirmed.

/s/ David H. Sawyer  
/s/ Patrick M. Meter  
/s/ Bill Schuette